

Senate Bill No. 548

(By Senators Palumbo, Carmichael, Green, Stollings and Beach)

[Introduced February 12, 2014; referred to the Committee on the
Judiciary; and then to the Committee on Finance.]

**FISCAL
NOTE**

A BILL to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new section, designated §11-16-11b; and to
amend and reenact §60-8-3 of said code, all relating to
creating a special one-day license for charitable events to
sell nonintoxicating beer; and setting a \$25 fee.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended
by adding thereto a new section, designated §11-16-11b; and that
§60-8-3 of said code be amended and reenacted, all to read as
follows:

CHAPTER 11. TAXATION.

ARTICLE 16. NONINTOXICATING BEER.

§11-16-11b. Special license for one-day charitable events;

1 **license fee and application; license subject to**
2 **provisions of article; exceptions.**

3 (a) The commissioner may issue a special one-day license to be
4 designated a Class S1 license for the retail sale of
5 nonintoxicating beer to a duly organized nonprofit corporation,
6 limited liability entity or an association allowing the sale and
7 serving of nonintoxicating beer when raising money for athletic,
8 charitable, educational or religious purposes. The special license
9 is for no longer than one day and the nonrefundable fee is \$25. The
10 nonintoxicating beer used during the event may be donated by or
11 purchased from a licensed retailer, distributor or resident brewer.
12 The license application shall contain information as the
13 commissioner may require and shall be submitted to the commissioner
14 at least fifteen days prior to the event and contain information as
15 the commissioner may require.

16 (b) A license issued under this section and the licensee
17 remain subject to all other provisions of this article and the
18 rules and orders of the commissioner relating to the special
19 license: *Provided*, That the commissioner may by rule or order
20 provide for certain waivers or exceptions as the circumstances of
21 each event may require, including, without limitation, the right to
22 revoke or suspend any license issued pursuant to this section prior
23 to any notice or hearing, notwithstanding section twenty-four of

1 this article: *Provided, however,* That under no circumstances may
2 the provisions of subdivision (1), (2) or (3), subsection (a),
3 section eighteen of this article, be waived, nor may any exception
4 be granted with respect thereto.

5 **CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.**

6 **ARTICLE 8. SALE OF WINES.**

7 **§60-8-3. Licenses; fees; general restrictions.**

8 (a) No person may engage in business in the capacity of a
9 winery, farm winery, supplier, distributor, retailer, private wine
10 bed and breakfast, private wine restaurant, private wine spa or
11 wine specialty shop without first obtaining a license from the
12 commissioner, nor shall a person continue to engage in any activity
13 after his or her license has expired, been suspended or revoked.
14 No person may be licensed simultaneously as a distributor and a
15 retailer. No person, except for a winery or farm winery, may be
16 licensed simultaneously as a supplier and a retailer. No person
17 may be licensed simultaneously as a supplier and a private wine bed
18 and breakfast, private wine restaurant or a private wine spa. No
19 person may be licensed simultaneously as a distributor and a
20 private wine bed and breakfast, a private wine restaurant or a
21 private wine spa. No person may be licensed simultaneously as a
22 retailer and a private wine bed and breakfast, a private wine
23 restaurant or a private wine spa.

1 (b) The commissioner shall collect an annual fee for licenses
2 issued under this article, as follows:

3 (1) One hundred fifty dollars per year for a supplier's
4 license;

5 (2) Twenty-five hundred dollars per year for a distributor's
6 license and each separate warehouse or other facility from which a
7 distributor sells, transfers or delivers wine shall be separately
8 licensed and there shall be collected with respect to each location
9 the annual license fee of \$2,500 as herein provided;

10 (3) One hundred fifty dollars per year for a retailer's
11 license;

12 (4) Two hundred fifty dollars per year for a wine specialty
13 shop license, in addition to any other licensing fees paid by a
14 winery or retailer holding a license, except for the amount of the
15 license fee and the restriction to sales of winery or farm winery
16 wines, a winery or farm winery acting as a wine specialty shop
17 retailer is subject to all other provisions of this article which
18 are applicable to a wine specialty shop retailer as defined in
19 section two of this article;

20 (5) One hundred fifty dollars per year for a wine tasting
21 license;

22 (6) One hundred fifty dollars per year for a private wine bed
23 and breakfast license, and each separate bed and breakfast from

1 which a licensee sells wine shall be separately licensed and there
2 shall be collected with respect to each location the annual license
3 fee of \$150 as herein provided;

4 (7) Two hundred fifty dollars per year for a private wine
5 restaurant license, and each separate restaurant from which a
6 licensee sells wine shall be separately licensed and there shall be
7 collected with respect to each location the annual license fee of
8 \$250 as herein provided;

9 (8) One hundred fifty dollars per year for a private wine spa
10 license and each separate private wine spa from which a licensee
11 sells wine shall be separately licensed and there shall be
12 collected with respect to each location the annual license fee of
13 \$150 as herein provided;

14 (9) One hundred fifty dollars per year for a wine sampling
15 license issued for a wine specialty shop under subsection (n) of
16 this section;

17 (10) No fee shall be charged for a special one-day license
18 under subsection (p) of this section or for a heritage fair and
19 festival license under subsection (q) of this section; and

20 (11) One hundred fifty dollars per year for a direct shipper's
21 license for a licensee who sells and ships only wine and \$250 per
22 for a direct shipper's license who ships and sells wine,
23 nonfortified dessert wine, port, sherry or Madeira wines.

1 (12) Three hundred dollars per year for a multicapacity winery
2 or farm winery license which shall enable the holder to operate as
3 a retailer, wine specialty shop, supplier and direct shipper
4 without obtaining an individual license for each capacity.

5 (c) The license period shall begin on July 1 of each year and
6 end on June 30 of the following year and if granted for a less
7 period, the same shall be computed semiannually in proportion to
8 the remainder of the fiscal year.

9 (d) No retailer may be licensed as a private club as provided
10 by article seven of this chapter, except as provided by subsection
11 (k) of this section.

12 (e) No retailer may be licensed as a Class A retail dealer in
13 nonintoxicating beer as provided by article sixteen, chapter eleven
14 of this code: *Provided*, That a delicatessen, a caterer or party
15 supply store which is a grocery store as defined in section two of
16 this article and which is licensed as a Class A retail dealer in
17 nonintoxicating beer may be a retailer under this article:
18 *Provided, however*, That any delicatessen, caterer or party supply
19 store licensed in both capacities must maintain average monthly
20 sales exclusive of sales of wine and nonintoxicating beer which
21 exceed the average monthly sales of nonintoxicating beer.

22 (f) A wine specialty shop under this article may also hold a
23 wine tasting license authorizing the retailer to serve

1 complimentary samples of wine in moderate quantities for tasting.
2 Such wine specialty shop shall organize a wine taster's club, which
3 has at least fifty duly elected or approved dues-paying members in
4 good standing. Such club shall meet on the wine specialty shop's
5 premises not more than one time per week and shall either meet at
6 a time when the premises are closed to the general public, or shall
7 meet in a separate segregated facility on the premises to which the
8 general public is not admitted. Attendance at tastings shall be
9 limited to duly elected or approved dues-paying members and their
10 guests.

11 (g) A retailer who has more than one place of retail business
12 shall obtain a license for each separate retail establishment. A
13 retailer's license may be issued only to the proprietor or owner of
14 a bona fide grocery store or wine specialty shop.

15 (h) The commissioner may issue a special license for the
16 retail sale of wine at any festival or fair which is endorsed or
17 sponsored by the governing body of a municipality or a county
18 commission. Such special license shall be issued for a term of no
19 longer than ten consecutive days and the fee therefor shall be \$250
20 regardless of the term of the license unless the applicant is the
21 manufacturer of said wine on a winery or a farm winery as defined
22 in section five-a, article one of this chapter, in which event the
23 fee shall be \$50 if the event is held on the premises of the winery

1 or farm winery. The application for the license shall contain
2 information as the commissioner may reasonably require and shall be
3 submitted to the commissioner at least thirty days prior to the
4 first day when wine is to be sold at the festival or fair. A
5 winery or a farm winery licensed under this subsection may exhibit,
6 conduct tastings or sell samples, not to exceed a reasonable
7 serving of three ounces, and may sell wine samples for consumption
8 on the premises during the operation of a festival or fair:
9 *Provided*, That for licensed wineries or farm wineries at a licensed
10 festival or fair the tastings, samples and off-premises sales shall
11 occur under the hours of operation as required in this article,
12 except that on Sunday tastings, samples and off-premises sales are
13 unlawful between the hours of 2:00 a. m. and 10:00 a. m. A special
14 license issued other than to a winery or a farm winery may be
15 issued to a "wine club" as defined herein below. The festival or
16 fair committee or the governing body shall designate a person to
17 organize a club under a name which includes the name of the
18 festival or fair and the words "wine club". The license shall be
19 issued in the name of the wine club. A licensee may not commence
20 the sale of wine as provided in this subsection until the wine club
21 has at least fifty dues-paying members who have been enrolled and
22 to whom membership cards have been issued. Thereafter, new members
23 may be enrolled and issued membership cards at any time during the

1 period for which the license is issued. A wine club licensed under
2 ~~the provisions of~~ this subsection may sell wine only to its
3 members, and in portions not to exceed eight ounces per serving.
4 The sales shall take place on premises or in an area cordoned or
5 segregated so as to be closed to the general public, and the
6 general public shall not be admitted to the premises or area. A
7 wine club licensee under ~~the provisions of~~ this subsection shall be
8 authorized to serve complimentary samples of wine in moderate
9 quantities for tasting.

10 A license issued under ~~the provisions of~~ this subsection and
11 the licensee holding the license shall be subject to all other
12 provisions of this article and the rules and orders of the
13 commissioner relating to the special license: *Provided*, That the
14 commissioner may by rule, regulation or order provide for certain
15 waivers or exceptions with respect to the provisions, rules,
16 regulations or orders as the circumstances of each festival or fair
17 may require, including, without limitation, the right to revoke or
18 suspend any license issued pursuant to this section prior to any
19 notice or hearing notwithstanding the provisions of section twenty-
20 seven and twenty-eight of this article: *Provided, however*, That
21 under no circumstances shall the provisions of subsection (c) or
22 (d), section twenty of this article be waived nor shall any
23 exception be granted with respect thereto.

1 A license issued under ~~the provisions of~~ this subsection and
2 the licensee holding the license is not subject to the provisions
3 of subsection (g) of this section.

4 (I) (A) The commissioner may issue a special license for the
5 retail sale of wine in a professional baseball stadium. A license
6 to sell wine granted pursuant to this subsection entitles the
7 licensee to sell and serve wine, for consumption in a professional
8 baseball stadium. For the purpose of this subsection,
9 "professional baseball stadium" means a facility constructed
10 primarily for the use of a major or minor league baseball
11 franchisee affiliated with the National Association of Professional
12 Baseball Leagues, Inc., or its successor, and used as a major or
13 minor league baseball park. Any special license issued pursuant to
14 this subsection shall be for a term beginning on the date of
15 issuance and ending on the next following June 30, and its fee is
16 \$250 regardless of the length of the term of the license. The
17 application for the special license shall contain information as
18 the commissioner may reasonably require and must be submitted to
19 the commissioner at least thirty days prior to the first day when
20 wine is to be sold at the professional baseball stadium. The
21 special license may be issued in the name of the baseball
22 franchisee or the name of the primary food and beverage vendor
23 under contract with the baseball franchisee. These sales must take

1 place within the confines of the professional baseball stadium,
2 provided that the exterior of the area where wine sales may occur
3 are surrounded by a fence or other barrier prohibiting entry except
4 upon the franchisee's express permission, and under the conditions
5 and restrictions established by the franchisee, so that the wine
6 sales area is closed to free and unrestricted entry by the general
7 public.

8 (B) A license issued under this subsection and the licensee
9 holding the license is subject to all other provisions of this
10 article and the rules and orders of the commissioner relating to
11 the special license: *Provided*, That the commissioner may by rule or
12 order grant certain waivers or exceptions to those rules or orders
13 as the circumstances of each professional baseball stadium may
14 require, including, without limitation, the right to revoke or
15 suspend any license issued pursuant to this section prior to any
16 notice or hearing notwithstanding sections twenty-seven and twenty-
17 eight of this article: *Provided, however*, That under no
18 circumstances may subsection (c) or (d), section twenty of this
19 article be waived nor shall any exception be granted concerning
20 those subsections.

21 (C) The commissioner has the authority to propose rules for
22 legislative approval in accordance with article three, chapter
23 twenty-nine-a of this code to implement this subsection.

1 (j) A license to sell wine granted to a private wine bed and
2 breakfast, private wine restaurant, private wine spa or a private
3 club under ~~the provisions~~ of this article entitles the operator to
4 sell and serve wine, for consumption on the premises of the
5 licensee, when the sale accompanies the serving of food or a meal
6 to its members and their guests in accordance with ~~the provisions~~
7 ~~of~~ this article: *Provided*, That a licensed private wine bed and
8 breakfast, private wine restaurant, private wine spa or a private
9 club may permit a person over twenty-one years of age to purchase
10 wine, consume wine and recork or reseal, using a tamper resistant
11 cork or seal, up to two separate bottles of unconsumed wine in
12 conjunction with serving of food or a meal to its members and their
13 guests in accordance with ~~the provisions~~ of this article and in
14 accordance with regulations promulgated by the commissioner for the
15 purpose of consumption of said wine off premises: *Provided*,
16 *however*, That for this article, food or a meal provided by the
17 private licensee means that the total food purchase, excluding
18 beverage purchases, taxes, gratuity or other fees is at least \$15:
19 *Provided further*, That a licensed private wine restaurant or a
20 private club may offer for sale for consumption off the premises,
21 sealed bottles of wine to its customers provided that no more than
22 one bottle is sold per each person over twenty-one years of age, as
23 verified by the private wine restaurant or private club, for

1 consumption off the premises. Such licensees are authorized to
2 keep and maintain on their premises a supply of wine in quantities
3 as may be appropriate for the conduct of operations thereof. Any
4 sale of wine so made shall be subject to all restrictions set forth
5 in section twenty of this article. A private wine restaurant may
6 also be licensed as a Class A retail dealer in nonintoxicating beer
7 as provided by article sixteen, chapter eleven of this code.

8 (k) With respect to subsections (h), (I), (j), (o) and (p) of
9 this section, the commissioner shall promulgate legislative rules
10 in accordance with ~~the provisions of~~ chapter twenty-nine-a of this
11 code with regard to the form of the applications, the suitability
12 of both the applicant and location of the licensed premises and
13 other legislative rules deemed necessary to carry the provisions of
14 the subsections into effect.

15 (l) The commissioner shall promulgate legislative rules in
16 accordance with ~~the provisions of~~ chapter twenty-nine-a of this
17 code to allow restaurants to serve wine with meals, and to sell
18 wine by the bottle for off-premises consumption as provided in
19 subsection (j) of this section. Each restaurant so licensed shall
20 be charged an additional \$100 per year fee.

21 (m) The commissioner shall establish guidelines to permit
22 wines to be sold in all stores licensed for retail sales.

23 (n) Wineries and farm wineries may advertise off premises as

1 provided in section seven, article twenty-two, chapter seventeen of
2 this code.

3 (o) A wine specialty shop under this article may also hold a
4 wine sampling license authorizing the wine specialty shop to
5 conduct special wine sampling events at a licensed wine specialty
6 shop location during regular hours of business. The wine specialty
7 shop may serve up to three complimentary samples of wine,
8 consisting of no more than one ounce each, to any one consumer in
9 one day. Persons serving the complimentary samples must be twenty-
10 one years of age and an authorized representative of the licensed
11 wine specialty shop, winery, farm winery or a representative of a
12 distributor or registered supplier. Distributor and supplier
13 representatives attending wine sampling events must be registered
14 with the commissioner. No licensee, employee or representative may
15 furnish, give or serve complimentary samples of wine to any person
16 less than twenty-one years of age or to a person who is physically
17 incapacitated due to the consumption of alcoholic liquor or the use
18 of drugs. The wine specialty shop shall notify and secure
19 permission from the commissioner for all wine sampling events one
20 month prior to the event. Wine sampling events may not exceed six
21 hours per calendar day. Licensees must purchase all wines used
22 during these events from a licensed farm winery or a licensed
23 distributor.

1 (p) The commissioner may issue special one-day licenses to
2 duly organized, nonprofit corporations and associations allowing
3 the sale and serving of wine when raising money for athletic,
4 charitable, educational or religious purposes. The nonrefundable
5 fee is \$25 for the one-day license. The license application shall
6 contain information as the commissioner may reasonably require and
7 shall be submitted to the commissioner at least thirty days prior
8 to the event. Wines used during these events may be donated by or
9 purchased from a licensed retailer, a distributor or a farm winery.
10 Under no circumstances may ~~the provision of~~ subsection (c), section
11 twenty of this article be waived nor may any exception be granted
12 with respect thereto.

13 (q) The commissioner may issue special licenses to heritage
14 fairs and festivals allowing the sale, serving and sampling of wine
15 from a licensed farm winery. The license application shall contain
16 information required by the commissioner and shall be submitted to
17 the commissioner at least thirty days prior to the event. Wines
18 used during these events may be donated by or purchased from a
19 licensed farm winery. Under no circumstances may ~~the provision of~~
20 subsection (c), section twenty of this article be waived nor may
21 any exception be granted with respect thereto. The commissioner
22 shall propose rules for legislative approval in accordance with
23 article three, chapter twenty-nine-a of this code to implement ~~the~~

1 ~~provisions~~ of this subsection.

NOTE: The purpose of this bill is to create a one-day special license for charitable events to sell nonintoxicating beer. The bill sets a \$25 fee.

§11-16-11b section is new; therefore, strike-throughs and underscoring have been omitted.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.